

## **CR 13 Draft Response to Area of Origin Water Rights Issues**

This is a response to comments expressing concerns that the CALFED Bay-Delta Program actions will result in violations of statutory area of origin protections and other water rights law. Many of the commenters feel that CALFED's Water Transfer Program and other water management activities will result in adverse impacts to existing water rights holders and "source areas" from which water would be transferred. Please consult Chapter 1 of the Programmatic Environmental Impact Statement/Environmental Impact Report (PEIS/EIR), Project Description, for information concerning the objectives and purpose of the CALFED Bay-Delta Program. Please refer to Chapter 2 of the PEIS/EIR, Alternative Descriptions, for an overview of the Water Transfer Program. Please see Chapters 5, 6 and 7 for discussion of environmental consequences related to this and other programs. For additional information regarding the Water Transfer Program, please consult the Water Transfer Program Plan appendix to the PEIS/EIR.

The CALFED Bay-Delta Program is designed to address a wide variety of problems and concerns affecting the Bay-Delta system. While it focuses on the Delta region, it has the potential for affecting resources throughout the vast solution area. CALFED seeks to accomplish its objectives in partnership with landowners, stakeholders, and communities throughout the solution area, being especially mindful of the potential impacts on private property owners and property rights, including water rights.

The Program fully intends to implement its actions in a manner consistent with California water rights, including existing laws and regulations protecting areas of origin. This intention is supported by understanding that the CALFED Bay Delta Program does not have any legal or regulatory jurisdiction over water rights or their application. These authorities are vested in the State Water Resources Control Board (Board) and in the justice system (the courts). Although the Board is one of the CALFED agencies working to develop a long-term Bay-Delta solution, the Board retains its independent regulatory authority over water rights and water quality protection as authorized in California water law. As such, the Board is regularly involved in water rights decisions and proceedings independent of the CALFED Program. The Board is currently engaged in water right hearings concerning the allocation of responsibilities to water right holders for meeting Bay-Delta water quality standards as part of other state and federal requirements.

While the Board has the authority to regulate water rights, the Legislature has the authority to create, refine or change water rights law within Constitutional limits. Recently, Governor Davis signed legislation (SB 970) that clarifies water rights protection for transferred water. The author of this bill, Senator Jim Costa, intended these provisions to assure that the water rights of those who offer their water for sale would not be put at risk by offering water for temporary transfer to other users, including the environment.

The Water Transfer Program Plan has generated many comments about CALFED's impacts to water rights. However, the Water Transfer Program Plan does not propose any changes to the legal structure in which the current water market operates. The Program Plan does include recommendations and proposals to streamline approval procedures, clarify operational requirements, such as reservoir refill

and carriage water requirement; and require additional analysis and disclosure. The program does not propose any change to existing water rights or other California Water Code provisions that regulate water transfers in California.

CALFED also received comments expressing concern that future source area water needs have not been considered. However, impact analyses completed as part of the Draft Programmatic EIS/EIR incorporated projections of future increases in source area demands, as estimated for the year 2020 by the California Department of Water Resources for Bulletin 160-98. These assumptions are described in Section A.3.3 of Attachment A to Draft PEIS/EIR. These projected source area demands are assumed to be met as a first priority in all hydrologic modeling studies and analyses conducted for the Draft Programmatic EIS/EIR.

*Revised 10/26/99*